VIRGINIA SECTION

EFFECT OF OMISSION OF ENACTING CLAUSE IN A STATUTE IN VIRGINIA.—In 7 VA. LAW REV. 319, is contained a discussion treating the meaning and construction of a statute passed at the 1920 session of the General Assembly, amending and re-enacting § 5189 of the Virginia Code of 1919, which has to do with the recordation of conditional sales contracts.[1] Since the article appeared, a question has been raised by a letter to the REVIEW as to whether or not the new statute has any operative effect whatsoever, since it lacks an enacting clause. It is contended by our correspondent that the omission is fatal and makes the statute completely void.

A majority of the States have constitutional provisions expressly requiring enacting clauses for every bill which shall become law,[2] but there is no section in the Virginia Constitution dealing with the matter directly, nor does there seem to be any section from which the necessity of such a clause may be readily inferred. No case has been found in which the question was at issue, and it is a reasonable conclusion to suppose that it still remains an open one in this jurisdiction.

Due to the constitutional requirements existing in so many places as stated above, there is but little authority dealing with the precise point in controversy. In *The Seat of Government Case*,[3] (decided in 1861), it was held by a two to one decision that an act passed by the legislative assembly of the Territory of Washington, changing the seat of government from Olympia to Vancouver, was void because it lacked an enacting clause. The decision of the majority was based purely on the somewhat strained analogy of the custom of the majority of States to require such clauses by specific constitutional provisions. It should be noted that, previous to the rendering of the decision, the voters in the Territory, pursuant to another statute, had in an election held for the purpose voted that Olympia should remain the seat of government, which result was consummated by the effect of the opinion that was reached by the majority of the court. In a vigorous dissenting opinion Justice Wyche criticizes the decision of the majority in an effective manner. He points out that an enacting clause serves no useful purpose in ascertaining the legislative intent, or in construing the terms of a statute. A legislative body may employ such modes of expression as it desires in conveying its will in the absence of positive restrictions, unless it exceeds the very boundaries of natural equity and reason. He states further that an enacting clause is slight evidence of itself

[1] Acts, 1920, p. 398.
[2] CUSHING, L. S., LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES (1856), pp. 819-20.
[3] 1 Wash. Terr. 115.

that a statute was passed by the body named within it. If doubt as to such a matter were raised it would be settled, not by merely glancing at the enacting clause, but by resorting to the legislative journals, and there discovering by inspection whether the particular bill had been passed by the legislature. One of the first acts passed in the Territory of Washington was a statute regulating the manner of selecting and summoning jurors and regulating certain other judicial affairs, which lacked any enacting clause whatsoever; but its validity was never questioned in a judicial proceeding.

In *Watson* v. *Corey*,[4] (decided in 1889), it was said that an act having to do with the incorporation of cities was not invalid because it had no enacting clause. There is little citation of authority, but the statement is based very largely upon the reasoning adopted in the dissenting opinion of Justice Wyche in *The Seat of Government Case*.

Where an enacting clause is expressly called for in a State Constitution, the majority rule is that this sort of provision is mandatory and not directory.[5] But in some States the opposite view is taken,[6] and statutes passed without enacting clauses are upheld despite the constitutional provisions.

The logic of Justice Wyche's argument appears to be eminently sound and would seem to govern the principles involved. An enacting clause at most is a mere matter of form, and having no real function is easily capable of being dispensed with, without impairing the validity of a statute or lessening its operative effect. The fact that it has been customary in all legislative bodies to incorporate enacting expressions in all bills intended to become law, without any real necessity for such a practice, is of minor consideration where the real substantive portion of a law becomes endangered. The natural presumption in favor of upholding a law if possible should be followed.[7] It is earnestly submitted that in Virginia the validity of a statute should not be held to be impaired in any way merely because it contains no enacting clause.[8]

M. T. S.

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[4] 6 Utah 150, 21 Pac. 1089.

[5] People *v.* Dettenthaler, 118 Mich. 595, 77 N. W. 450, 44 L. R. A. 164; State *v.* Patterson, 98 N. C. 660, 4 S. E. 350. See also Sjoberg *v.* Security Sav. & L. Asso., 73 Minn. 203, 75 N. W. 1116, 72 Am. St. Rep. 616; Walden *v.* Whigman, 120 Ga. 646, 48 S. E. 159.

[6] McPherson *v.* Leonard, 29 Md. 377; Levin *v.* Hewes, 118 Md. 624, 86 Atl. 233; Cape Girardeau *v.* Riley, 52 Mo. 424, 14 Am. Rep. 427.

[7] State *ex rel.* McCaffery *v.* Aloe, 152 Mo. 466, 54 S. W. 494, 47 L. R. A. 393; Slack *v.* Jacob, 8 W. Va. 612.

[8] "Where there can be no doubt as to the authority by which a statute has been enacted, or as to the fact that it was intended by the legislature to be a law, it can scarcely be the province of the courts to declare it invalid because of the absence of an enacting clause, if there is no constitutional requirement of such a clause." 25 R. C. L. 776. See also note in L. R. A. 1915B, 1060.